

# Memorandum



**Date:** (Public Hearing 10-18-16)  
October 5, 2016

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

Agenda Item No. 16(A)(1)

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the "From:" line.

**Subject:** Ordinance Authorizing the County Mayor or County's Mayor's Designee to Apply to the State of Florida Department of Environmental Protection Agency's State Revolving Fund Program

## **Recommendation**

It is recommended that the Board of County Commissioners (Board) adopt the attached Ordinance authorizing the County Mayor or County's Mayor's designee to apply to the State of Florida Department of Environmental Protection (FDEP) Agency's State Revolving Fund (SRF) Program. Participation in the program will allow the Miami-Dade Water and Sewer Department (WASD) to receive low-interest rate loans in an aggregate amount not to exceed \$250,000,000.00. The loans from the SRF Program, which is set forth in Chapter 62-552 of the Florida Administrative Code, will provide funding for a portion of the needed improvements to the County's water supply, treatment and distribution facilities, which are operated and maintained by WASD. These water system improvements are currently budgeted in WASD's Multi-Year Capital Plan.

## **Scope**

The low-interest loans from FDEP's SRF Program will have a countywide impact.

## **Fiscal Impact/Funding Source**

There is a positive fiscal impact related to the adoption of this Ordinance. The fiscal impact will accumulate over time as WASD applies for loans from the SRF Program to finance its water system improvements on a project by project basis in an amount not to exceed \$250,000,000.00. It is projected that the County will save up to \$130,997,778 in project financing costs if low-interest rate loans in the maximum amount of \$250,000,000.00 is authorized and borrowed in lieu of WASD selling bonds to finance a portion of the needed improvements for the County's water system.

In accordance with Ordinance 15-59, WASD performed a fiscal analysis of the anticipated debt service payments for the first loan to be borrowed in the amount of \$9.1 million. The fiscal impact is shown in Exhibit A (as attached). Per the loan terms of the SRF Program, each semi-annual debt service payment including interest would total \$306,195, making for a total debt service payment of \$612,390 each fiscal year for 20 years, totaling \$12.2 million. Since the repayment of an SRF loan does not commence until the construction project reaches substantial completion, there will be no debt service payments in FY 2016-17 and FY 2017-18.

In addition, interest rates will be charged for each project loan application in accordance with Chapter 62-552 of the Florida Administrative Code, which is currently 60 percent of the market rate. The funding source to repay the loans is WASD operating revenues.

## **Track Record/Monitor**

Frances Morris, WASD's Chief Financial Officer, will oversee and manage all actions related to FDEP's SRF Program for the Department.

**Social Equity Statement**

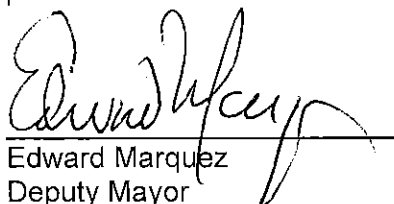
Authorization to receive low interest SRF loans will benefit WASD's customers regardless of geographic location, demographics or income levels as the funds borrowed for these water improvement projects will serve to protect the County's potable drinking water; in addition, the lower interest rates will yield a savings to the County lessening the monetary burden to customers associated with the cost of borrowing money.

**Background**

In 1998, the Board approved Ordinance No. 98-126, which authorized the County to apply for up to \$60,000,000.00 in low-interest loans from FDEP's Agency's SRF Program for upgrades to the water supply, treatment and distribution facilities. Since that time, the County has received \$44,600,000.00 in low-interest loans to fund water facility projects through the SRF Program. The County has committed the remaining balance of \$15,400,000.00 to recently awarded design-build projects. By participating in the SRF Program in lieu of issuing County bonds, the County anticipates to save a total of approximately \$36,732,001.00 from the \$60,000,000.00 authorized SRF loan as a result of lower interest rates, and shorter loan terms. We are able to take advantage of additional reductions in interest rates for water projects that comply with: (a) the United States Department of Labor Davis-Bacon Act which requires construction contracts over \$2,000.00 to contain a clause setting forth federal labor standards provisions for wage rates; and (b) the American Iron and Steel Requirement, which requires that iron and steel products used for construction projects must be produced in the United States.

Adoption of this ordinance authorizes the County Mayor or County Mayor's designee to apply for SRF loans, execute the related loan agreements and any amendments thereto that are consistent with the authorization provided by the Board in this resolution; and accept and expend such funds. Loans are applied for on a project by project basis as projects are identified and approved by FDEP. Loan terms for each water project will require semi-annual payments over a 20-year period after the project reaches substantial completion, with the amount of each payment dependent upon the amount borrowed and the finance rate charged. The County must agree to: (a) maintain rates and charges, together with other pledged revenues, sufficient to provide net revenues not less than 1.15 times the amount required to make each semi-annual SRF loan payment; or (b) establish an escrowed reserve not less than the sum of two (2) semi-annual loan payments. Any deficiencies in the pledged revenues available for the semi-annual loan payment described in the loan agreement would be paid from any legally available WASD funds.

As specific projects are approved for funding under the SRF Program, individual loan agreements will be executed to fund the water project without further Board action; however, the planning, design and construction of such water projects will continue to conform to the County's selection and competitive bid processes.

  
Edward Marquez  
Deputy Mayor

# EXHIBIT A

## WASD State Revolving Loan Authorization Not To Exceed \$250 Million

Fiscal Impact Table

Use Existing  
Resources

Revenue Category	Value	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2019-21	Yes	No
General Fund								
Proprietary		\$ -	\$ -	\$ 612,390	\$ 612,390	\$ 612,390		X
Federal Funds								
State Funds								
Interagency Transfers								
<b>Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 612,390</b>	<b>\$ 612,390</b>	<b>\$ 612,390</b>		
<b>Expenditure Category</b>								
<i>Operating</i>								
Salary								
Fringes								
Court Costs								
Contractual Services								
Charges for County Services								
Other Operating								
Grants to Outside Organizations								
Capital								
<b>Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		
<i>Non-Operating</i>								
Debt Services			\$ -	\$ -	\$ -	\$ -		X
Distribution of Funds In Trust								
Transfers								
Depreciation, Amortization, and Deletions								
<b>Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>		
<b>Grand Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (612,390)</b>	<b>\$ (612,390)</b>	<b>\$ (612,390)</b>		

**Note:** Although the BCC is authorizing for WASD to borrow (SRL) not exceeding \$250 million, not all \$250 million will be borrowed at once. The fiscal impact for the next five years is calculated based on debt service payments for the first loan borrowed in the amount of \$9.1 million. Future Year Proprietary revenues and debt service payments are included in FY 2015-16 Adopted Budget Book, Volume 1, WASD Financial Outlook.

**Note:** Fiscal impact narrative (paragraph above the table) should contain the following, if applicable:

1. Description of the anticipated increase or decrease of expenditures listed above and current and subsequent fiscal years, if any,
2. Description of projected dollar value of anticipated expenditures that will be absorbed within existing resources within the current fiscal year;
3. Description of subsequent governmental action that will be required in order to determine anticipated revenues and expenditures, including new revenues (federal, state, or the need to increase existing fees)
4. Any long-term fiscal implications as a result of the implementation of the proposed legislation, if any, in cases where risk factors or other variables that may impact future revenues or expenditures are uncertain, volatile, or difficult to project, a description of risk factors or variables and estimate or projection of anticipated or projected impacts to revenues and expenditures
5. Description of all assumptions used to project the fiscal impact of the proposed legislation and include estimate anticipated revenues and expenditures
6. In the cases where the Mayor has determined a "no fiscal impact", a description of the assumptions and analysis used to reach that conclusion

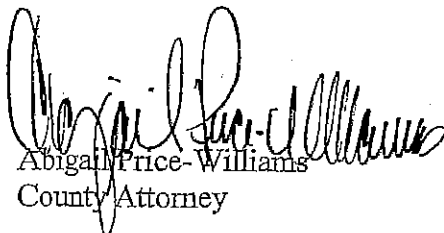


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 18, 2016

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 16(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 16(A)(1)  
10-18-16

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AUTHORIZING INDEBTEDNESS IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$250,000,000.00 IN THE FORM OF LOAN FROM STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROVIDE FUNDS FOR CONSTRUCTION OF CERTAIN WATER FACILITIES OF MIAMI-DADE WATER AND SEWER DEPARTMENT; AUTHORIZING AND INSTRUCTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO APPLY FOR LOAN, EXECUTE LOAN AGREEMENT AND RECEIVE AND EXPEND SUCH FUNDS, AND EXECUTE AMENDMENTS TO THE LOAN AGREEMENT; PROVIDING SEVERABILITY, EXCLUSION FROM THE CODE AND EFFECTIVE DATE

**WHEREAS**, pursuant to Section 403.8532, Florida Statutes (the "Act"), the State of Florida (the "State") Department of Environmental Protection (the "Department") is authorized to make loans to local governments to finance or refinance the construction of water facilities, the planning and design of which has been or will be reviewed by the Department; and

**WHEREAS**, this Board finds and determines that there is a need for improvements to the water supply, treatment and distribution facilities of Miami-Dade County, Florida (the "Local Government" or the "County"); and

**WHEREAS**, a loan from Florida's State Revolving Loan Program for Drinking Water Facilities pursuant to the Act and Chapter 62-552, Florida Administrative Code, or such other applicable Chapter of the Florida Administrative Code would provide the funding the County needs to finance the design and construction of various facilities within the County's water supply, treatment and distribution system (the "Project"); and

**WHEREAS**, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") wishes to apply to the Department for one or more Local Government Agency Loans ("Loan") pursuant to the Act, in an amount not to exceed \$250,000,000.00; and

**WHEREAS**, the Project is necessary to improve system compliance and protect public health,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

Section 1. The County Mayor or County Mayor's designee is authorized to apply and borrow from the State Revolving Fund Loan Program, pursuant to the provisions of the Act, Chapter 62-552, Florida Administrative Code, or such other applicable Chapter of the Florida Administrative Code, monies in an aggregate principal amount not to exceed \$250,000,000.00 for the design, engineering and construction of the Project, debt service reserve fund, and capitalized interest accruing during the period of construction, which Loan shall be payable from the Pledged Revenues as hereafter specifically described and identified in Section 9.

Section 2. The County Mayor or County Mayor's designee is authorized to execute one or more Loan Agreements between the County and the State pursuant to the Revolving Loan Program in a form substantially similar to the Loan Agreement attached hereto and marked as Exhibit A with such changes as shall be approved by the County Mayor or County Mayor's designee after consultation with the County Attorney's Office and the Miami-Dade Water and Sewer Department, and any amendments to such Loan Agreement which are consistent with the terms of this Ordinance for a total amount not to exceed \$250,000,000.00 and to take whatever action necessary to accomplish the purpose of this Ordinance.

Section 3. Loans borrowed pursuant to the Act shall have an established interest rate in accordance with Chapter 62-552, Florida Administrative Code, or such other applicable Chapter of the Florida Administrative Code, which is currently sixty percent (60%) of the market rate as established using the Thomson Publishing Corporation's "Bond Buyer" 20-Bond Index. Each Loan shall accrue interest as borrowed funds are expended with loan payments being deferred until the date of substantial completion of the related Project. Each Loan will have a 20-year term commencing upon substantial completion of the related Project.

Section 4. The Loan shall not be or constitute general obligations or indebtedness of the County within the meaning of the Constitution and laws of the State, but shall be payable solely from and secured by a lien upon and pledge of the Pledged Revenues, as hereinafter defined in Section 9. Nothing in the Loan Agreement or this Ordinance shall be construed as creating a lien or charge upon such other legally available funds or as preventing the County from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds. Nothing in the Loan Agreement shall be deemed to pledge ad valorem revenues or the ad valorem taxing power of the County or shall permit or constitute a mortgage upon any County assets. The obligations of the County under the Loan Agreement shall not constitute a pledge of all legally available non-ad valorem revenues of the County, but shall be payable solely as provided in the Loan Agreement and shall be subject in all respects to the provisions of Section 166.241, Florida Statutes.

Section 5. "Loan Agreement" shall mean one or more loan agreements and any amendments thereto entered between the Department and the County Mayor or County Mayor's designee setting forth the terms and conditions of the Loan, which shall be executed by the County Mayor or the County Mayor's designee and which shall not exceed the amount authorized herein. A "Loan Payment" shall mean the payment amount due from Miami-Dade Water & Sewer Department per the Loan Agreement.

Section 6. In accordance with the provisions of the Home Rule Amendment and Charter of Miami-Dade County, Florida as amended, and the general laws of the State, including Chapters 125 and 166, Florida Statutes, as amended, the County has the authority to authorize this indebtedness in the form of a Loan from the Department and to execute a Loan Agreement with the Department as contemplated by this Ordinance and to construct and operate the Project.

Section 7. The County will comply with all applicable regulations, rules and guidelines of the Department and such other state agencies, if any, which are concerned with Florida's State Revolving Fund Program for Drinking Water Facilities, and the County will furnish all information required by the regulations and rules of the state agencies.

Section 8. The County will apply and use any funds received either from the State, its agencies or the United States of America in connection with the Project for the purpose for which they are furnished and will render such accountings of such funds as may be required by the State or the United States of America.

Section 9. "Pledged Revenues" shall mean the revenues derived yearly from the operation of the Project and the water and sewer systems of the County after payment of the operation and maintenance expenses and the satisfaction of all payment obligations as shall be set forth in the Loan Agreement. The County agrees that it will at all times maintain rates and



charges for the Project or its use, sufficient to provide Pledged Revenues not less than 1.15 times the amount required to make each semiannual loan repayment or establish an escrowed reserve in an amount not less than the sum of two semiannual Loan Payments and will submit annual financial reports substantiating the adequacy of the Pledged Revenues to the appropriate state agency or agencies. If the Pledged Revenues are not sufficient to make the Loan Payment(s) for each fiscal year when due, the County will include in its budget other legally available funds of the Miami-Dade Water and Sewer Department which will be sufficient together with the Pledged Revenues to make such Loan Payment(s). Nothing in this covenant or the Loan Agreement shall be construed as creating a lien or charge upon such other legally available funds or as preventing the County from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

Section 10. The Department shall have a lien of the Pledged Revenues prior and superior to any other lien, pledge or assignment not specifically set forth in the Loan Agreement, as existing or hereinafter amended. Any of the Pledged Revenues may be released from the lien on such Revenues in favor of the Department if the Department makes a determination that either the remaining Pledged Revenues shall not be less than 1.15 times the amount required to make each semiannual Loan Payment(s) or an escrowed reserve has been established using local funds in an amount not less than the sum of two semiannual Loan Payment(s).

Section 11. The County may issue additional debt obligations on parity with, or senior to, the lien of the Department on the Pledged Revenues if the County either demonstrates, at the time of issuance of such additional debt obligations, that the Pledged Revenues shall not be less than 1.15 times the amount required to make each semiannual loan payment or an escrowed reserve has been established using local funds in an amount not less than the sum of the semiannual Loan Payment(s).

Section 12. The County agrees that the Department will hold the Loan proceeds in a construction fund account and that payments to the County for construction of each project will be disbursed by the Department in accordance with procedures prescribed by the Department.

Section 13. The County agrees that, in the event the funds received in any one fiscal year from the State Revolving Loan Program are not sufficient to complete the Project, it may enter into an amendment to the Loan Agreement to complete the Project if the County can at that time demonstrate its ability to meet the debt service requirements of the original Loan Agreement and the amended Loan Agreement. In no event shall the aggregate Loan amount, including any amended Loan Agreement, exceed \$250,000,000.00.

Section 14. If any provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Ordinance and this Ordinance shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

Section 15. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by the Board.

Section 16. It is the intention of the Board of County Commissioners and it is hereby ordained that the provisions of this ordinance shall be excluded from the Code of Miami-Dade County.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

APW

Prepared by:

JRA

Juliette R. Antoine

100-100000

# Exhibit A

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

MIAMI-DADE COUNTY, FLORIDA

DRINKING WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT

DW1300 010

W- 655

W- 685-B

W- 746-A (closed)

W- 788-R

W- 789

Florida Department of Environmental Protection  
Bureau of Water Facilities Funding  
Twin Towers Office Building  
2600 Blair Stone Road, MS 3505  
Tallahassee, Florida 32399-2400

# DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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DRINKING WATER STATE REVOLVING FUND CONSTRUCTION LOAN AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND  
CONSTRUCTION LOAN AGREEMENT**

**DW1300 010**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and MIAMI-DADE COUNTY, FLORIDA, existing as a local governmental agency (Project Sponsor) under the laws of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to Section 403.8532, Florida Statutes, the Department is authorized to make loans to finance or refinance the construction of public water systems, the planning and design of which have been reviewed by the Department; and

WHEREAS, the Project Sponsor has made application for the financing of the Project, and the Department has determined that such Project meets all requirements for a loan.

NOW, THEREFORE, in consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants hereinafter set forth, it is agreed as follows:

**ARTICLE I - DEFINITIONS**

**1.01. WORDS AND TERMS.**

Words and terms used herein shall have the meanings set forth below:

- (1) "Agreement" or "Loan Agreement" shall mean this construction loan agreement.
- (2) "Authorized Representative" shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) "Capitalized Interest" shall mean interest accruing on a loan before the 20-year repayment period begins and it is financed as part of the Loan principal.
- (4) "Depository" shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than \$50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.
- (5) "Gross Revenues" shall mean all income or earnings received by the Project Sponsor from the ownership or operation of its Water and Sewer Systems, including investment income, all as calculated in accordance with generally accepted accounting principles. Said Gross Revenues are available from metered residential, industrial and commercial sales; sales to public authorities; sales to other utilities; and other revenue. Gross Revenues shall not include proceeds from the sale or other disposition of any part of the Water or Sewer System, condemnation awards or proceeds of insurance, except use and occupancy or business interruption insurance, received with respect to the Water or Sewer System.

(6) "Loan" shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(7) "Loan Application" shall mean the completed form which provides all information required to support obtaining construction loan financial assistance.

(8) "Loan Debt Service Account" shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the Project Sponsor for the purpose of accumulating Monthly Loan Deposits and making Semiannual Loan Payments.

(9) "Loan Repayment Reserve Account" or "Loan Repayment Reserve" shall mean the account into which will be deposited the amount set aside to pay temporary and unexpected deficiencies, if any, in the Semiannual Loan Payment.

(10) "Loan Service Fee" shall mean an origination fee which shall be paid to the Department by the Project Sponsor. The fee may be paid with Loan proceeds and amortized as part of the Loan principal. The Loan Service Fee shall be adjusted downward if adjustment of Project costs results in a Loan decrease.

(11) "Monthly Loan Deposit" shall mean the monthly deposit to be made by the Project Sponsor to the Loan Debt Service Account.

(12) "Operation and Maintenance Expense" shall mean the costs of operating and maintaining the Water and Sewer Systems determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(13) "Pledged Revenues" shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Gross Revenues derived yearly from the operation of the Water and Sewer Systems after payment of the Operation and Maintenance Expense and the satisfaction of all yearly payment obligations on account of the Senior Revenue Obligations and any senior obligations issued pursuant to Section 7.02 of this Agreement.

(14) "Project" shall mean the works financed by this Loan and shall consist of furnishing all labor, materials, and equipment to construct water treatment and transmission facilities improvements in accordance with the plans and specifications accepted by the Department for the following contracts:

(a) Alexander Orr Jr. Water Treatment Plant CO<sub>2</sub> System Improvements, Contract No. W-746; and

(b) John B. Preston Water Treatment Plant Softener No. 7, Contract No. W-665A; and

(c) Alexander Orr Jr. Water Treatment Plant East Pump Room Switchgear and Pumps Replacement, Contract No. W655; and

(d) Installation of 54-Inch P.C.C.P. Water Main from Hialeah W.T.P. to N.W. 54 Street, Contract No. W-788; and

(e) 54-Inch P.C.C.P. Water Main from N.W. 54 Street to N.W. North River Drive, Contract No. W-789.

*with*  
The Project is in agreement with the Miami-Dade Water and Sewer Department Water Facilities Master Plan, dated December 1997. Approval of this Project is provided by the Florida Finding of No Significant Impact dated June 5, 1998. The Project is an Equivalency Project as defined in Chapter 62-552, Florida Administrative Code.

(15) "Semiannual Loan Payment" shall mean the payment due from the Project Sponsor to the Department at six-month intervals, and it is comprised of principal and interest.

(16) "Senior Revenue Obligations" shall mean the following debt obligations:

(a) \$409,415,000 Dade County, Florida, Water and Sewer System Revenue Refunding Bonds, Series 1993, issued pursuant to Ordinance No. 93-134, as amended and supplemented; and

(b) \$431,700,000 Dade County, Florida, Water and Sewer System Revenue Bonds, Series 1994, issued pursuant to Ordinance No. 93-134, as amended and supplemented; and

(c) \$346,820,000 Dade County, Florida, Water and Sewer System Revenue Bonds, Series 1995, issued pursuant to Ordinance No. 93-134, as amended and supplemented; and

(d) \$437,195,000 Dade County, Florida, Water and Sewer System Revenue Bonds, Series 1997, issued pursuant to Ordinance No. 93-134, as amended and supplemented; and

(e) Additional bonds issued on a parity with the obligations identified above pursuant to Section 208 of Ordinance No. 93-134, as amended and supplemented; and

(f) Any refunding bonds issued to refund the obligations identified above provided such bonds shall not increase annual debt service during the repayment period of this loan; and

(g) Any Hedge Obligations as defined and permitted in Ordinance No. 93-134.

(17) "Sewer System" shall mean all facilities owned by the Project Sponsor for collection, transmission, treatment and reuse of wastewater and its residuals.

(18) "Water System" shall mean all facilities owned by the Project Sponsor for supplying and distributing water for residential, commercial, industrial, and governmental use.

#### 1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word "person" shall include corporations and associations, including public bodies, as well as natural persons.

### ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

#### 2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

(1) The Project Sponsor has full power and authority to enter into this Agreement and to comply with the provisions hereof.



(2) The Project Sponsor currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Project Sponsor's knowledge, threatened, which seeks to restrain or enjoin the Project Sponsor from entering into or complying with this Agreement.

(4) All permits, real property interests, and approvals required as of the date of this Agreement have been obtained for construction and use of the Project. The Project Sponsor knows of no reason why any future required permits or approvals are not obtainable.

(5) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(6) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its planning, engineering, administrative, and construction activities financed by this Loan or its operation of the Project.

(7) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. Minority and Women's Business Enterprise goals as stated in the plans and specifications apply to this Project. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action as is necessary for compliance.

(8) The Project Sponsor shall maintain records using Generally Accepted Governmental Accounting Principles established by the Governmental Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accounts of the Water and Sewer Systems separate from all other accounts and it shall keep accurate records of all revenues, expenses, and expenditures relating to the Water and Sewer Systems, and of the Pledged Revenues, Loan disbursement receipts, Loan Debt Service Account, and Loan Repayment Reserve Account.

(9) In the event the anticipated Pledged Revenues are shown by the Project Sponsor's annual budget to be insufficient to make the Semiannual Loan Payments for such Fiscal Year when due, the Project Sponsor shall include in such budget other legally available funds which will be sufficient, together with the Pledged Revenues, to make the Semiannual Loan Payments. Such other legally available funds shall be budgeted in the regular annual governmental budget and designated for the purpose provided by this Subsection, and the Project Sponsor shall collect such funds for application as provided herein. The Project Sponsor shall notify the Department immediately in writing of any such budgeting of other legally available funds. Nothing in this covenant shall be construed as creating a pledge, lien, or charge upon any such other legally available funds; requiring the Project Sponsor to levy

or appropriate ad valorem tax revenues; or preventing the Project Sponsor from pledging to the payment of any bonds or other obligations all or any part of such other legally available funds.

(10) Beginning with the Fiscal Year in which the Loan Agreement is executed and continuing for each year thereafter until the Loan is retired, the Project Sponsor shall submit annual audit reports to the Department. The audits shall be conducted under the Office of Management and Budget Circular A-133 if applicable based on the expenditure amount of Loan proceeds. If an audit under Circular A-133 is not applicable, the audit shall be conducted under Section 11.45, Florida Statutes. Regardless of which type of audit is conducted, such audits shall address at a minimum the Project Sponsor's financial condition, accounts of the Water and Sewer Systems or other sources generating the Pledged Revenues, Loan disbursements received and Project expenditures (if any), and compliance with the Loan Agreement covenants. Beginning with the Fiscal Year of the first Semiannual Loan Payment, the scope of audits shall encompass the Loan Debt Service Account and Loan Repayment Reserve Account. The Project Sponsor shall cause its auditor to notify the Department immediately if anything comes to the auditor's attention during the annual examination of the Project Sponsor's records that would constitute a default under the Loan Agreement.

(11) Within 12 months of the amendment establishing final Project costs, the Project Sponsor shall submit to the Department a separate audit, by an independent certified public accountant, of the Project revenues, including receipt of disbursements under financial assistance agreements, and expenditures. The audit shall be conducted in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States. The audit shall address whether the Project Sponsor complied with requirements set forth in the Loan Agreement, including applicable State and Federal laws and regulations referenced in Subsection (7) above. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-552, Florida Administrative Code. A final determination of the allowability of such costs shall be made by the Department.

(12) Each year, beginning three months before the first Semiannual Loan Payment and ending with the year during which the final Loan repayment is made, the Project Sponsor's Authorized Representative or its chief financial officer shall submit, pursuant to the schedule established in Section 10.06, a certification that: (a) Pledged Revenue collections satisfy the rate coverage requirement; (b) the Loan Debt Service Account contains the funds required; (c) the Loan Repayment Reserve Account contains the funds required; and (d) insurance in effect for the facilities generating the Pledged Revenues adequately covers the customary risks to the extent that such insurance is available.

(13) Pursuant to Section 216.349 of the Florida Statutes, the Project Sponsor shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(14) The Project Sponsor agrees to construct the Project in accordance with the Project schedule. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted. If for any reason construction is not completed by the specified completion date, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit or funding of the Loan Repayment Reserve Account.

(15) The Project Sponsor covenants that this Agreement is entered into for the purpose of constructing, refunding, or refinancing the Project which will in all events serve a public purpose. The Project Sponsor covenants that it will, under all conditions, complete and operate the Project to fulfill the public need.

## 2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor's legal counsel covenants that;

(1) This Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor in accordance with its terms upon execution by both parties; and

(2) This Agreement specifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

## ARTICLE III - LOAN REPAYMENT ACCOUNTS

### 3.01. LOAN DEBT SERVICE ACCOUNT.

The Project Sponsor shall establish a Loan Debt Service Account with a Depository and begin making Monthly Loan Deposits no later than the date set forth for such action in Section 10.06 of this Agreement.

Beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit, the Project Sponsor's chief financial officer shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues.

### 3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit requirements.

### 3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the sole purpose of making the Semiannual Loan Payment or for discharging the Project Sponsor's obligations pursuant to Section 8.01.

### 3.04. LOAN REPAYMENT RESERVE ACCOUNT.

A Loan Repayment Reserve Account shall be established with a Depository. The Project Sponsor shall deposit into the account the reserve amount identified in Section 10.06 of this Agreement by the date set forth therein.

### 3.05. LOAN REPAYMENT RESERVE WITHDRAWALS.

The Loan Repayment Reserve Account shall be used by the Project Sponsor to cure a temporary and unexpected deficiency in any Semiannual Loan Payment. The Project Sponsor's chief financial officer shall promptly notify the Department upon any withdrawal from the account. Any unused portion of the Loan Repayment Reserve Account shall be applied to the final Semiannual Loan Payment(s) or for discharging the Project Sponsor's obligations pursuant to Section 8.01.

### 3.06. RESTORATION OF LOAN REPAYMENT RESERVE ACCOUNT.

A default causing the Project Sponsor to use the Loan Repayment Reserve Account or the use of the account to prevent default shall result in the Project Sponsor being responsible for making special deposits to restore the account. Special restoration deposits shall be made from the first moneys legally available to the Project Sponsor for such purpose.

### 3.07. INVESTMENT OF LOAN REPAYMENT RESERVE MONEYS.

Moneys on deposit in the Loan Repayment Reserve Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date set for the final Semiannual Loan Payment provided, however, that moneys must be available for withdrawal, if necessary, pursuant to Section 3.05 of this Agreement. All investment income and earnings shall be credited to the Loan Repayment Reserve Account.

### 3.08. ASSETS HELD IN TRUST.

The assets in each of the accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge in favor of the Department.

## ARTICLE IV - PROJECT INFORMATION

### 4.01. PROJECT CHANGES.

Project changes prior to bid opening shall be made by addendum to plans and specifications. Changes after bid opening shall be made by change order. The Project Sponsor shall submit all addenda and all change orders to the Department. Any change order which increases the contract amount by more than one hundred thousand dollars (\$100,000) or which alters the approved Project scope or which involves a procurement method that is not consistent with the approved method or which involves deletion or substantive modification of any requirement of Chapter 62-552, Florida Administrative Code, requires written approval by the Department.

#### 4.02. TITLE TO PROJECT SITE.

The Project Sponsor shall have an interest in real property sufficient for the construction and location of the Project free and clear of liens and encumbrances which would impair the usefulness of such sites for the intended use.

#### 4.03. PERMITS AND APPROVALS.

The Project Sponsor shall have obtained, prior to the Department's authorization to award construction contracts, all permits and approvals required for construction of the Project or portion of the Project funded under this Agreement.

#### 4.04. ENGINEERING SERVICES.

A professional engineer, registered in the State of Florida, shall be employed by, or under contract with, the Project Sponsor to oversee construction.

#### 4.05. PROHIBITION AGAINST ENCUMBRANCES.

The Project Sponsor is prohibited from selling, leasing, or disposing of any part of the Water or Sewer System which would materially reduce operational integrity or Gross Revenues so long as this Agreement, including any amendments thereto, is in effect unless the written consent of the Department is first secured.

#### 4.06. COMPLETION MONEYS.

In addition to the proceeds of this Loan, the Project Sponsor covenants that it has obtained, or will obtain, sufficient moneys from other sources to complete construction and place the Project in operation on, or prior to, the date specified in Article X. Failure of the Department to approve additional financing shall not constitute a waiver of the Project Sponsor's covenants to complete and place the Project in operation.

#### 4.07. CLOSE-OUT.

The Department shall conduct a final inspection of the Project and Project records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.04.

#### 4.08. LOAN DISBURSEMENTS.

Disbursements shall be made only by the State Comptroller and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Project Sponsor for engineering and administrative allowances, reimbursement of the incurred construction costs and related services, and establishing a Loan Repayment Reserve Account.

The disbursement of the Loan Service Fee, when included in the Loan principal, will be made directly to the Department. Disbursement of the allowances to the Project Sponsor shall be made upon the Department's receipt of a disbursement request form. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Project Sponsor is required to make such payments.

(3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.

(4) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.

## ARTICLE V - RATES AND USE OF THE WATER AND SEWER SYSTEMS

### 5.01. RATE COVERAGE.

The Project Sponsor shall maintain rates and charges for the services furnished by the Water and Sewer Systems which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year. In addition, the Project Sponsor shall satisfy the coverage requirements of all senior and parity debt obligations.

### 5.02. NO FREE SERVICE.

The Project Sponsor shall not permit connections to, or furnish any services afforded by, the Water or Sewer System without making a charge therefor based on the Project Sponsor's uniform schedule of rates, fees, and charges.

### 5.03. MANDATORY CONNECTIONS.

The Project Sponsor shall adopt, as necessary, and enforce requirements, consistent with applicable laws, for the owner, tenant or occupant of each building located on a lot or parcel of land which is served, or may reasonably be served, by the Sewer System to connect such building to the Sewer System.

#### 5.04. NO COMPETING SERVICE.

The Project Sponsor shall not allow any person to provide any services which would compete with the Water or Sewer System so as to adversely affect Gross Revenues.

#### 5.05. MAINTENANCE OF THE WATER AND SEWER SYSTEMS.

The Project Sponsor shall operate and maintain the Water and Sewer Systems in a proper, sound and economical manner and shall make all necessary repairs, renewals and replacements.

#### 5.06. ADDITIONS AND MODIFICATIONS.

The Project Sponsor may make any additions, modifications or improvements to the Water and Sewer Systems which it deems desirable and which do not materially reduce the operational integrity of any part of the Water or Sewer System. All such renewals, replacements, additions, modifications and improvements shall become part of the Water and Sewer Systems.

#### 5.07. COLLECTION OF REVENUES.

The Project Sponsor shall use its best efforts to collect all rates, fees and other charges due to it. The Project Sponsor shall establish liens on premises served by the Water or Sewer System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Project Sponsor shall, to the full extent permitted by law, cause to discontinue the services of the Water and Sewer Systems and use its best efforts to shut off water service furnished to persons who are delinquent beyond customary grace periods in the payment of Water and Sewer System rates, fees and other charges.

### ARTICLE VI - DEFAULTS AND REMEDIES

#### 6.01. EVENTS OF DEFAULT.

Each of the following events is hereby declared an event of default:

(1) Failure to fund the Loan Repayment Reserve Account or to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.

(2) Except as provided in Subsections 6.01(1) and 6.01(7), failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Project Sponsor by the Department.

(3) Any warranty, representation or other statement by, or on behalf of, the Project Sponsor contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading.

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Water or Sewer System or Gross Revenues thereof; or if such order or decree,

having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Project Sponsor, for the purpose of effecting a composition between the Project Sponsor and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the Water or Sewer System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Project Sponsor under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Project Sponsor, is not dismissed within 60 days after filing.

(7) Failure of the Project Sponsor to give immediate written notice of default to the Department and such failure shall continue for a period of 30 days.

#### 6.02. REMEDIES.

Upon any event of default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Water and Sewer Systems, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Water and Sewer Systems and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Water and Sewer Systems, establish and collect fees and charges, and apply the revenues to the reduction of the obligations under this Agreement.

(5) By certifying to the Auditor General and the Comptroller delinquency on loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By accelerating the repayment schedule or increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Loan interest rate for a default under Subsection 6.01(1).



### 6.03. DELAY AND WAIVER.

No delay or omission by the Department to exercise any right or power accruing upon event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

## ARTICLE VII - THE PLEDGED REVENUES

### 7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues prior and superior to any other lien, pledge or assignment with the following exception. All obligations of the Project Sponsor under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to the Senior Revenue Obligations defined in Section 1.01 of this Agreement and any additional senior obligations issued with the Department's consent pursuant to Section 7.02. Any of the Pledged Revenues may be released from the lien on such Pledged Revenues in favor of the Department if the Department makes a determination, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

### 7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent shall be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water and Sewer Systems and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed 1.15 times the annual combined debt service requirements of this Agreement, of any other State Revolving Fund loans secured by the Pledged Revenues, and of the obligations proposed to be issued by the Project Sponsor. However, no such consent is required with respect to issuance of Senior Revenue Obligations as defined in Section 1.01.

## ARTICLE VIII - GENERAL PROVISIONS

### 8.01. DISCHARGE OF OBLIGATIONS.

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law from time to time, may be made to effect

defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

#### 8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department and the U.S. Environmental Protection Agency's Inspector General for inspection at any reasonable time after the Project Sponsor has received a disbursement and before three years have elapsed after the Department's final Project disbursement to the Project Sponsor.

#### 8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to Project sites and administrative offices to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to cooperate during Project inspections, including making available working copies of plans and specifications and supplementary materials.

#### 8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Project Sponsor. The Project Sponsor shall not assign rights created by this Agreement without the written consent of the Department.

#### 8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency. This Agreement may be amended after all construction contracts are executed to re-establish the Project cost, Loan amount, Project schedule, and Semiannual Loan Payment amount. A final amendment establishing the final Project costs shall be completed after the Department's final inspection of the Project records.

#### 8.06. ANNULMENT OF AGREEMENT.

The Department may unilaterally annul this Agreement if the Project Sponsor has not drawn any of the Loan proceeds within eighteen months after the effective date of this Agreement. If the Department unilaterally annuls this Agreement, the Department will provide written notification to the Project Sponsor.

#### 8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

## ARTICLE IX - CONSTRUCTION CONTRACTS AND INSURANCE

### 9.01. AUTHORIZATION TO AWARD CONSTRUCTION CONTRACTS.

The following documentation is required to receive the Department's authorization to award construction contracts:

- (1) Proof of advertising.
- (2) Award recommendation, bid proposal, and bid tabulation (certified by the responsible engineer).
- (3) Certified copy of the Project Sponsor's tentative award resolution.
- (4) Certification of compliance with the conditions of the Department's approval of competitively or non-competitively negotiated procurement.
- (5) Certification by the Authorized Representative that affirmative steps were taken to encourage Minority and Women's Business Enterprises participation in Project construction.
- (6) Current certifications for Minority and Women's Business Enterprises participating in the contract. If the goals as stated in the plans and specifications are not met, documentation of actions taken shall be submitted.

### 9.02. SUBMITTAL OF CONSTRUCTION CONTRACT DOCUMENTS.

After the Department's authorization to award construction contracts has been received, the Project Sponsor shall submit contractor insurance certifications and notices to proceed with construction.

### 9.03. INSURANCE REQUIRED.

The Project Sponsor shall cause the Project, as each part thereof is certified by the engineer responsible for overseeing construction as completed, and the Water and Sewer Systems (hereafter referred to as "Revenue Producing Facilities") to be insured by an insurance company or companies licensed to do business in the State of Florida against such damage and destruction risks as are customary for the operation of Revenue Producing Facilities of like size, type and location to the extent such insurance is obtainable from time to time against any one or more of such risks.

The proceeds of insurance policies received as a result of damage to, or destruction of, the Project or the other Revenue Producing Facilities, shall be used to restore or replace damaged portions of the facilities. If such proceeds are insufficient, the Project Sponsor shall provide additional funds to restore or replace the damaged portions of the facilities. Repair, construction or replacement shall be promptly completed.

## ARTICLE X - DETAILS OF FINANCING

### 10.01. PRINCIPAL AMOUNT OF LOAN.

The estimated principal amount of the Loan is \$12,731,100, which consists of \$11,855,790 to be disbursed to the Project Sponsor, the Loan Service Fee of \$230,210 to be disbursed directly to the Department, and \$645,100 of Capitalized Interest.

Capitalized interest is not disbursed to the Project Sponsor, but is amortized via periodic loan repayments to the Department as if it were actually disbursed. Capitalized interest is computed at the interest rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishing the schedule of actual disbursements.

This project is a Segmented Project. Additional State Revolving Fund financing for the Project is dependent upon the availability of additional funds. The current funding limitations and future funding priority entitlement for Segmented Projects are set forth in the Chapter 62-552 of the Florida Administrative Code.

### 10.02. INTEREST RATE.

The rate of interest on the unpaid principal of the Loan amount specified in Section 10.01 is 3.05 percent per annum; however, if this Agreement is not executed by the Project Sponsor and returned to the Department before January 1, 1999, the interest rate may be adjusted. A separate interest rate shall be established for any additional funds provided by amendment to this Agreement.

### 10.03. LOAN TERM.

The Loan shall be repaid in 40 Semiannual Loan Payments.

### 10.04. REPAYMENT SCHEDULE.

The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan and level debt service. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs and actual dates and amounts of disbursements after adjustment for any overpayment, or underpayment, associated with previous Semiannual Loan Payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records.

Each Semiannual Loan Payment shall be in the amount of \$427,508 until this Agreement is amended. The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the Loan, including Capitalized Interest. Interest shall be computed as of the due date of the Semiannual Loan Payment.

Semiannual Loan Payments shall be received by the Department beginning on or before December 15, 2002 and semiannually thereafter on June 15 and December 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

#### 10.05. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that the actual Project costs have not been determined as of the effective date of this Agreement. Project cost adjustments may be made as a result of construction bidding or mutually agreed upon Project changes. Additional Loan Repayment Reserve Account and Loan Service Fee amounts will be established for any additional funding provided by amendment to this Agreement. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor receives other governmental funding for this Project, the work funded by such other governmental funding will not be financed by the Loan. The Department shall establish the final costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of the Project Sponsor's Project audit or a Department audit. The Project Sponsor agrees to the following estimates of Project costs:

#### PROJECT COSTS

CATEGORY	COST(\$)	AUTHORIZED LOAN AMOUNT(\$) TO DATE
(1) Administrative Allowance	146,379	
(2) Engineering Allowance	1,463,790	<i>Line items</i>
(3) Construction and Demolition	20,751,000	<i>may vary</i>
(4) Contingencies	2,075,498	<i>based on</i>
(5) Technical Services During Construction	1,370,000	<i>actual</i>
(6) Start-up Services	200,000	<i>disbursements</i>
SUBTOTAL	26,006,667	11,510,476
(7) Loan Repayment Reserve *	780,200	345,314
SUBTOTAL (Disbursable to Local Gov.)	26,786,867	11,855,790
(8) Loan Service Fee *	520,133	230,210
SUBTOTAL (Total Disbursable)	27,307,000	12,086,000 ✓
(9) Capitalized Interest	1,467,000	645,100
TOTAL (Loan Principal Amount)	28,774,000	12,731,100

\* The Loan Repayment Reserve represents three percent and the Loan Service Fee represents two percent of the Loan amount excluding the Capitalized Interest, Loan Repayment Reserve, and Loan Service Fee amounts; three percent of \$11,510,476 equals \$345,314 and two percent of \$11,510,476 equals \$230,210 for the Loan amount authorized to date.

#### 10.06. PROJECT SCHEDULE.

The Project Sponsor agrees by execution hereof:

- (1) Initiation of Project construction is scheduled for February 15, 1999.
- (2) Completion of Project construction is scheduled for June 15, 2002.
- (3) The Loan Repayment Reserve Account shall be established and \$344,800 shall be deposited no later than June 15, 2002.
- (4) The Loan Debt Service Account shall be established and Monthly Loan Deposits shall begin no later than June 15, 2002.

(5) The initial annual certification required under Subsection 2.01(12) of this Agreement shall be due September 15, 2002. Thereafter, until the final Semiannual Loan Repayment is made, the certification shall be submitted each year at the time the annual audit report is submitted under Subsection 2.01(10).

(6) The first Semiannual Loan Payment shall be due December 15, 2002.

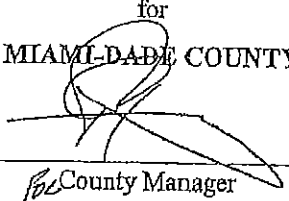
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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW1300 010 shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

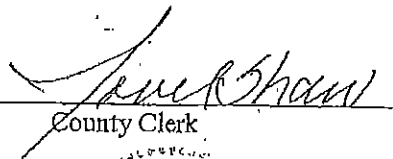
IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary of the Department and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Secretary of the Department.


for  
MIAMI-DADE COUNTY

  
County Manager

Attest:

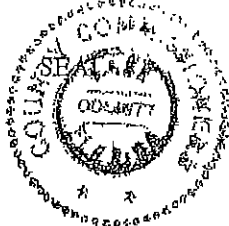
I attest to the covenants of Section 2.02, entitled  
Legal Authorization, and as to form and legal  
sufficiency.

  
County Clerk

  
County Attorney

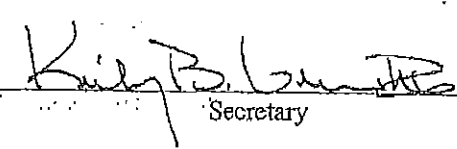
APPROVED AS TO  
AND LEGAL SUFFICIENCY

Assistant County Attorney



for

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

  
Secretary

DEC 23 1998

Date